COUNTY OF SANTA CRUZ

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September 5, 2013

Agenda Date: September 24, 2013

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: Consider Proposed Ordinance Deleting Chapter 7.124, Deleting Section 13.10.670, Amending the Commercial Uses Chart and the Definitions of the Zoning Ordinance and enacting new Chapter 7.124 all relating to Medical Marijuana

Dear Members of the Board:

Over the course of the past several years, your Board has been engaged in the formulation of public policy relating to the availability of medical marijuana. As with other state and local governments addressing this issue, the County has been confronted with a challenging set of legal, policy and practical issues. For example, federal law (known as the Controlled Substances Act) prohibits the manufacture, distribution, and possession of marijuana, while State law (known as the Compassionate Use Act, and the Medical Marijuana Program Act of 2004) creates a narrow defense for limited personal medical purposes from prosecution under State criminal laws prohibiting the possession and cultivation of marijuana. A recent ruling by the California Supreme Court has clarified the County's legal authority to enact public health, safety and welfare laws aimed at regulating access to medical marijuana. In addition, the U.S. Department of Justice has recently issued marijuana enforcement guidelines that establish priorities such as preventing distribution to minors, and sales by criminal enterprises, gangs and cartels, instead of prosecuting individuals for possession of small amounts of marijuana (see attached Memorandum from James M. Cole, Deputy Attorney General, dated August 29, 2013.)

On June 18, 2013, your Board directed County Counsel to return on September 10, 2013, subsequently continued to this date, with a draft revised ordinance to regulate medical marijuana dispensaries, considering the legal approaches in the ordinances

recently considered by the City of Los Angeles, including cultivation regulations, and a framework for the location of medical marijuana dispensaries.

Regulatory History

On May 3, 2011, your Board enacted a comprehensive set of land use regulations governing medical marijuana dispensaries (Santa Cruz County Ordinance No. 5090). Prior to that time, a medical marijuana dispensary was not considered a lawfully permitted use under the County's zoning ordinance.

Some six months later and prior to the issuance of any permits to marijuana dispensaries, your Board adopted a temporary moratorium in response to the published opinion in *Pack v. Superior Court* (2011) 199 Cal.App.4th 1070. As explained below, *Pack* cast doubt on the legality of your Board's ordinance authorizing permits for medical marijuana collectives based on alleged preemption by State law. The Supreme Court subsequently dismissed the *Pack* appeal because the petitioners in the case abandoned the issue of federal preemption, and because the City of Long Beach repealed the ordinance which was the subject of the appeal and replaced it with a complete ban on dispensaries. The *Pack* decision, therefore, is no longer good law.

Around the time the California Supreme Court agreed to review the *Pack* case, the Court also granted review in *City of Riverside v. Inland Empire Patient's Health and Wellness Center, Inc.*, (2011) 200 Cal. App. 4th 885. In *Riverside*, the California Court of Appeal, Fourth Appellate District, upheld the city's complete ban on medical marijuana dispensaries. The case involves issues of state preemption and authority to regulate dispensaries.

Because the Supreme Court was expected to rule on issues affecting local government's ability to regulate medical marijuana dispensaries, this office recommended that your Board continue to place the County's medical marijuana regulatory program on hold until the Supreme Court issued a decision in *Riverside*. Your Board agreed and once more acted to extend the moratorium.

Legal History

On May 6, 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* ("*Inland Empire*"). In a unanimous opinion the Court ruled that California's medical marijuana laws do not preempt local ordinances that ban medical marijuana facilities. The ruling is significant not only for its analysis of State preemption principles, but also for its narrow

interpretation of the Compassionate Use Act ("CUA") and the Medical Marijuana Program Act of 2004 ("MMP") in affirming local police power authority.

Prior to *Inland Empire*, appellate courts had issued differing opinions on whether state law preempted local regulation of dispensaries including complete bans. Several published and unpublished opinions throughout the state concluded that the CUA and MMP did not preempt local bans. (See, e.g., *City of Riverside v. Inland Empire Patient's Health & Wellness Center, Inc.* (2011) 200 Cal.App.4th 885, review granted Jan. 18, 2012, S198638; *People v. G3 Holistic* (2011) 2011 Cal. App. Unpublished, LEXIS 8634, review granted Jan. 18, 2012, S198395; *People v. Wildomar Patients Compassionate Group, Inc.*, 2012 WL 967857, Cal. App. 4 Dist., Mar. 22 , 2012, Unpublished; *420 Caregivers, LLC v. City of Los Angeles* (2012) 207 Cal.App.4th 703, review granted Sept. 19, 2012, S204684.)

On the other hand, Division Three of the Fourth District Court of Appeal and Division One of the Second District Court of Appeal reached the opposite conclusion, interpreting the CUA and MMP as authorizing storefront dispensaries and immunizing them from local zoning prohibitions. (See *City of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413, 138 Cal.Rptr.3d 332, review granted May 16, 2012, S201454; *County of Los Angeles v. Alternative Medicinal Cannabis* (2012) 207 Cal.App.4th 601.

In deciding *Inland Empire*, the Supreme Court affirmed the broad legal authority of local governments to regulate and even completely ban medical marijuana operations and rejected the legal argument that the CUA and MMP preempted that authority. *Inland Empire* stated that: "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders."

Summary of Proposed Ordinance

Based on this new, clearer understanding of the legal landscape, County Counsel was directed to reconsider the County's current dispensary ordinance, particularly in light of the regulatory approach taken in the recent enactment of Proposition "D" in the City of Los Angeles. County Counsel worked with representations of the Sheriff's Office, the Planning Department, and the County Administrative Office to prepare the ordinance now before you.

The proposed ordinance is consistent with State and federal law, including *Inland Empire*. It would ban medical marijuana businesses and cultivation while at the same time

allowing them to operate in a manner consistent with the limited "affirmative defense" allowed under State law. The ordinance provides protection (referred to in the ordinance as "limited immunity") for certain medical marijuana businesses and cultivation activities. While limited immunity may be available from enforcement actions taken by the County, this ordinance would not provide any protection for violations of State or federal controlled substances laws. As proposed, this ordinance would regulate "medical marijuana businesses" by banning such businesses, but then granting immunity from the ban to those businesses that have operated with a valid Seller's Permit issued by the State Board of Equalization since January 1, 2012, and complied with certain specified operating requirements. Similarly, the ordinance prohibits the cultivation of marijuana, but then grants immunity to certain cultivation operations that adhere to specified requirements.

The ordinance defines a "medical marijuana business" as: (1) any location where marijuana is cultivated, processed, distributed, delivered, or given away to a qualified patient, a person with an identification card, or a primary caregiver; and (2) any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, or give away marijuana to a qualified patient, a person with an identification card, or a primary caregiver. The ordinance would exempt any dwelling unit where three (3) or fewer qualified patients, persons with identification cards, and/or primary caregivers process or cultivate marijuana on-site for their own personal medical use or for the personal medical use of their qualified patients. The ordinance would also exempt licensed health care facilities and both locations and vehicles during the time they are used to deliver medical marijuana to a qualified patient.

Staff has been able to tentatively identify five medical marijuana businesses that appear to have the necessary "Sellers Permit", however further information will be required to verify whether these or additional businesses meet this requirement.

The operational requirements for businesses, which are conditions for receiving immunity and enforceable as misdemeanors if violated, include limits on: where businesses may locate, operating hours, signage and lighting, marijuana and alcohol consumption, and when minors may enter the premises. In addition, businesses are required to maintain a 600-foot distance from schools, parks which include children's playground equipment, or another medical marijuana business. An existing business located in a prohibited zone district or in violation of one of the distance requirements but otherwise in compliance with the ordinance would have 180 days to relocate to another location.

As with medical marijuana businesses, cultivation is banned however immunity is granted to operations that comply with requirements that vary based on whether the

cultivation takes place within a residence or other structure; or whether outdoor cultivation takes place on less than an acre or on larger parcels.

CEQA Determination

Planning staff have determined that the proposed ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guidelines Section 15060(c)(2) based on a determination that the ordinance would restrict medical marijuana businesses consistent with existing legal authority. Because the existing baseline of conditions is that medical marijuana businesses and cultivation are not legally authorized uses under the County's zoning ordinance and the proposed ordinance would specifically ban such businesses and cultivation, the proposed ordinance would result in no direct or reasonably foreseeable indirect physical change or impact upon the environment. In addition, the proposed ordinance is exempted under CEQA Guidelines Section 15308 as it is an action taken by a regulatory agency to enhance the environment by prohibiting rather than authorizing medical marijuana businesses and cultivation.

IT IS THEREFORE RECOMMENDED that your Board take the following actions:

1. Approve the categorical exemption; and

2. Adopt in concept the attached ordinance deleting then reenacting Chapter 7.124 and making other conforming changes to the Santa Cruz County Code all relating to Medical Marijuana; and

3. Direct the Clerk of the Board to place the ordinance on the next available agenda for final consideration and action by the Board.

Very truly yours,

DANA MCRAE, COUNTY COUNSEL

By _____
Rahn Garcia
Chief Deputy County Counsel

Attachments: Ordinance
Memorandum from James M. Cole, Deputy Attorney General

ORDINANCE DELETING EXISTING CHAPTER 7.124 OF THE SANTA CRUZ COUNTY CODE REGARDING MEDICAL MARIJUANA; DELETING EXISTING 13.10.670; AMENDING THE COMMERCIAL USES CHART IN SUBDIVISION (B) OF SECTION 13.10.332 BY DELETING THE REFERENCE TO "MEDICAL MARIJUANA COOPERATIVES"; DELETING THE REFERENCE TO "MEDICAL MARIJUANA COOPERATIVES" IN 13.10.700-M.; AND ADDING NEW CHAPTER 7.124 ALL RELATING TO MEDICAL MARIJUANA

The Board of Supervisors of Santa Cruz County hereby finds and declares the following:

WHEREAS, in 1992 the voters of the County of Santa Cruz enacted Measure "A", adding Chapter 7.122 to the Santa Cruz County Code which declared support for making marijuana available for medical use; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996").

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere"; and

WHEREAS, the Board of Supervisors added Chapter 7.124 to the Santa Cruz County Code which implemented provisions of Proposition 215 by establishing a medical marijuana identification card program operated by the County; and

WHEREAS, in 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et seq.) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes; and

WHEREAS, Health and Safety Code section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420; and

WHEREAS, following enactment of Senate Bill 420, Chapter 7.124 was amended to establish local guidelines consistent with the new State law for the possession and cultivation of medical marijuana used by qualified patients and care givers; and

WHEREAS, the federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high

potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes; and

WHEREAS, the county's unique geographic and climatic conditions, which includes dense forested areas receiving substantial precipitation, provide conditions that are favorable to marijuana cultivation; and

WHEREAS, Proposition 215 and Senate Bill 420 primarily address the criminal law, providing qualifying patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes. Neither Proposition 215, Senate Bill 420, the relevant provisions of the Santa Cruz County Code, nor the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use adopted pursuant to Senate Bill 420, provide comprehensive civil regulation of premises used for marijuana cultivation. The unregulated cultivation of marijuana in the unincorporated area of Santa Cruz County can adversely affect the health, safety, and well-being of the county and its residents. Comprehensive civil regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, obnoxious smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated at a location is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place; and

WHEREAS, on May 6, 2013, the California Supreme Court unanimously ruled in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* ("*Inland Empire*"), that California's medical marijuana laws do not preempt local ordinances that ban medical marijuana facilities. The Court found that the local police power derived from Article XI, section 7, of the California Constitution includes broad authority to determine, for purposes of public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders, and that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders"; and

WHEREAS, cultivation of any amount of marijuana at locations or premises within six hundred feet of a school or public park which includes playground apparatus, creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants; and

WHEREAS, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of marijuana grown for medical use, the cultivation or other

concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, it is the purpose and intent of this chapter to implement state law by providing a means for regulating the cultivation of medical marijuana in a manner that is consistent with state law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses within the unincorporated territory of Santa Cruz County. This chapter is intended to be consistent with Proposition 215 and Senate Bill 420, and towards that end, is not intended to prohibit persons from individually, collectively, or cooperatively exercising any right otherwise granted by state law. Rather, the intent and purpose of this chapter is to establish reasonable regulations upon the manner in which marijuana may be cultivated, including restrictions on the amount of marijuana that may be individually, collectively, or cooperatively cultivated in any location or premises, in order to protect the public health, safety, and welfare in Santa Cruz County; and

WHEREAS, the limited right of qualified patients and their primary caregivers under state law to cultivate marijuana plants for medical purposes does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this chapter, Santa Cruz County will achieve a significant reduction in the aforementioned harms caused or threatened by the unregulated cultivation of marijuana in the unincorporated area of the County; and

WHEREAS, nothing in this ordinance shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under state or federal law. No provision of this chapter shall be deemed a defense or immunity to any action brought against any person by the Santa Cruz County District Attorney, the Attorney General of the State of California, or the United States of America.

NOW THEREFORE the Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

The Santa Cruz County Code is hereby amended by deleting Chapter 7.124 in its entirety.

SECTION II

The Santa Cruz County Code is hereby amended by adding new Chapter 7.124 to read as follows:

Chapter 7.124
Medical Marijuana

Sections:

7.124.010 Purpose.
7.124.020 Definitions.
7.124.030 Prohibited business activities.
7.124.040 Limited immunity for medical marijuana business.
7.124.050 No vested or nonconforming rights.
7.124.060 Prohibited cultivation activities.
7.124.070 Limited immunity for cultivation activities.

7.124.080 Limited severability.
7.124.090 Enforcement.
7.124.100 No Duty to Enforce.

7.124.010 Purpose.

The purpose of this Chapter is to prohibit medical marijuana businesses and cultivation while granting limited immunity from the enforcement of its prohibition to those medical marijuana businesses and cultivation activities that do not violate the restrictions and limitations set forth in this chapter.

It is also the purpose of this Chapter to mitigate the negative impacts and secondary effects associated with ongoing medical marijuana businesses and cultivation activity, including but not limited to demands placed on law enforcement and administrative resources; neighborhood disruption; the exposure of children to medical marijuana; drug sales to minors and adults; fraud in issuing, obtaining or using medical marijuana recommendations; robberies, burglaries, assaults, drug trafficking and other violent crimes; and the damage to the natural environment resulting from destructive cultivation activity.

This Chapter is not intended to conflict with federal or State law. It is the intention of the County that this Chapter be interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass.

7.124.020 Definitions.

As used in this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(A) "Building" means any structure having a roof supported by columns or walls, for the housing, shelter or enclosure of persons, animals, chattels, or property of any kind.

(B) "Cultivation" or "Cultivate" means the planting, growing, harvesting, drying, processing or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including within a fully enclosed and secure building.

(C) "Enforcing Officer" means the Planning Director or any other peace officer, public official or employee duly authorized to enforce against violations of the County Code.

(D) "Fence" means a wall or barrier connected by boards, masonry, rails, panels or any other materials for the purpose of enclosing space or separating parcels of land. For purposes of this Chapter, the term "Fence" does not include tarpaulins, scrap material, bushes or hedgerows.

(E) "Hazardous Materials" means any substance that is "flammable, reactive, corrosive or toxic", as further defined in California Health and Safety Code Sections 25501 and 25503.5, as may be amended.

(F) "Location" or "Parcel" means that unit of land assigned a unique Assessor's Parcel Number by the County Assessor, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area.

(G) "Manager" means any person to whom a medical marijuana business has delegated discretionary powers to organize, direct, carry on or control its operations. Authority to control one or more of the following functions shall be prima facie evidence that such a person is a manager of the business: (1) to hire, select, direct, schedule or assign employees or staff, including volunteers; (2) to acquire facilities, furniture, equipment or supplies other than the occasional replenishment of stock; (3) to disburse funds of the business other than for the receipt of regularly replaced items of stock; or (4) to make, or participate in making, policy decisions relative to operations of the business.

(H) "Marijuana" shall be construed as defined in California Health and Safety Code Section 11018 and further shall specifically include any product that contains marijuana or a derivative of marijuana.

(I) "Marijuana plant" means any mature or immature marijuana plant, or any marijuana seedling, unless otherwise specifically provided herein.

(J) "Medical marijuana business" means either of the following:

(1) Any location where marijuana is distributed, delivered, dispensed, sold or given away to a qualified patient, a person with an identification card, or a primary caregiver.

(2) Any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, dispense, or give away marijuana to a qualified patient, a person with an identification card, or a primary caregiver.

(3) Notwithstanding Subparagraphs (1) and (2) above, "medical marijuana business" shall not include any of the following:

(a) A residence or dwelling unit where the requirements of Subdivision (A) of Section 7.124.070 are met;

(b) Any location during only that time reasonably required for a primary caregiver to distribute, deliver, dispense or give away marijuana to a qualified patient or person with an identification card who has designated the individual as a primary caregiver, for the personal medical use of the qualified patient or person with an identification card, in accordance with California Health and Safety Code Section 11362.5 and 11362.7 *et seq.*;

(c) The location of any clinic licensed pursuant to Chapter 1 (commencing with Section 1200), a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250), a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01), a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569), a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725), all of Division 2 of the California Health and Safety Code where: (i) a qualified patient or person with an identification card receives medical care or supportive services, or both, from the clinic, facility, hospice, or home health agency, and (ii) the owner or operator, or one of not more than three employees designated by the owner or operator, of the clinic, facility, hospice, or home health agency has been designated as a

primary caregiver pursuant to California Health and Safety Code Section 11362.7(d) by that qualified patient or person with an identification card; or

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(d) Any vehicle during only that time reasonably required for its use by: (i) a qualified patient or person with an identification card to transport marijuana for his or her personal medical use, or (ii) a primary caregiver to transport, distribute, deliver, dispense, or give marijuana to a qualified patient or person with an identification card who has designated the individual as a primary caregiver, for the personal medical use of the qualified patient or person with an identification card, in accordance with California Health and Safety Code Section 11362.765.

(K) "Outdoor" or "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

(L) "Residence" means a fully enclosed structure used as the primary dwelling unit of a "Person with an identification card"; "Primary caregiver"; or "Qualified patient".

(M) "School" means any licensed preschool or any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

(N) "Structure" means anything constructed or erected which is supported directly or indirectly on the earth, but not including any vehicle.

(O) "Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a street, sidewalk or waterway, including but not limited to a device moved exclusively by human power.

(P) The following words or phrases when used in this Section shall be construed as defined in California Health and Safety Code Sections 1746,11362.5, 11362.7, and 11834.02. "Alcoholism or drug abuse recovery or treatment facility"; "Hospice"; "Identification card"; "Person with an identification card"; "Primary caregiver"; and "Qualified patient".

7.124.030 Prohibited business activities.

(A) It is unlawful and shall constitute a public nuisance to own, establish, operate, use, or permit the establishment or operation of a medical marijuana business, or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity in any medical marijuana business.

(B) The prohibition in Subsection (A), above, includes renting, leasing, or otherwise permitting a medical marijuana business to occupy or use a location, vehicle, or other mode of transportation.

7.124.040 Limited immunity for medical marijuana business.

Notwithstanding the activities prohibited by Section 7.124.030, and notwithstanding that medical marijuana business is not and shall not become a permitted use in the County for so long as this Chapter remains in effect, a medical marijuana business shall not be subject to the enforcement remedies set forth in the Santa Cruz County Code solely on the basis of: (1) an

activity prohibited by Section 7.124.030; and (2) the fact that medical marijuana business is not a permitted use in the County, provided however that, as authorized by California Health and Safety Code Section 11362.83, this limited immunity is available and may be asserted as an affirmative defense only so long as: (a) subsections (A) through (P) of this Section 7.124.040 remain in effect in their entirety; (b) it is asserted by a medical marijuana business at the one location identified in its original or any amended seller permit issued by the State Board of Equalization; and (c) only if that medical marijuana business does not violate any of the following:

(A) Every medical marijuana business is prohibited that was not operating as a medical marijuana business with a valid Seller's Permit issued by the State Board of Equalization before January 1, 2012, and maintains said permit without interruption;

(B) Every medical marijuana business is prohibited that remains open and/or operating between the hours of 8:00 p.m. and 10:00 a.m.;

(C) Every medical marijuana business is prohibited where marijuana and/or alcohol are consumed at the premises including any area used for parking any vehicle;

(D) Every medical marijuana business is prohibited that allows a minor unaccompanied by a parent or legal guardian to enter its premises;

(E) Every medical marijuana business is prohibited where marijuana is visible from the exterior of the premises;

(F) Every medical marijuana business is prohibited that illuminates any portion of its premises between the hours of 8:00 p.m. and 10:00 a.m. by lighting that is visible from the exterior of the premises, except such lighting as is reasonably utilized for the security of the premises;

(G) Every medical marijuana business is prohibited unless it is located in a zone district designated as PA (Professional and Administrative Offices), C-1 (Neighborhood Commercial), C-2 (Community Commercial), C-4 (Commercial Services), or C-T (Tourist Commercial) by the Santa Cruz County Zoning Ordinance. This subsection shall not apply to defeat the limited immunity claim of a medical marijuana business that is otherwise entitled to assert said claim of immunity if it moves within one hundred eighty (180) days after the effective date of this Chapter to a location that does not violate this subsection;

(H) Every medical marijuana business is prohibited that fails to identify by name and residence address each of its Managers to the County Planning Department by October 31st of each year and whose Managers fail to successfully pass and publicly display at the location of the medical marijuana business the results of an annual LiveScan background check to be completed by January 31st of each year. A failed LiveScan is a LiveScan that includes any felony conviction within the past ten years and/or current parole or probation for the sale or distribution of a controlled substance;

(I) Every medical marijuana business is prohibited that has one or more Managers who are also Managers at the same time of another medical marijuana business in the County;

(J) Every medical marijuana business is prohibited that provides an on-site location for physicians or medical professionals to write recommendations;

(K) Every medical marijuana business is prohibited that does not provide litter and graffiti removal services for the business premises on a daily basis;

(L) Every medical marijuana business is prohibited that does not provide dedicated security personnel during its hours of operation;

(M) Every medical marijuana business is prohibited that advertizes the sale of marijuana in any medium, except for: (1) an entry in the telephone directory with the name, location and phone number of the business; (2) signage as permitted by this Section 7.124.040; or (3) a website with the name, location and phone number of the business. Such web sites shall not include the display of a sales price for any marijuana product that is dispensed by the business except on a password required portal that may only be accessed by cooperative or collective members of the business.

(N) Every medical marijuana business is prohibited that provides signage for the business other than one identifying sign stating the business name, address and hours of operation not to exceed four square feet in area; such signs shall not be directly illuminated and shall not contain graphics identifying marijuana.

(O) Every medical marijuana business is prohibited that is located within: (1) six hundred (600) feet from a school; (2) six hundred (600) feet from a public park which includes children playground apparatus; or (3) six hundred (600) feet from another medical marijuana business. The distance specified in this paragraph shall be the horizontal distance measured in a straight line from the property line of the school, public park or other medical marijuana business, to the closest property line of the lot on which the medical marijuana business is located without regard to intervening structures. In the event that two or more medical marijuana businesses are located within 600 feet of one another, only the medical marijuana business with the earliest issuance date on a State Board of Equalization seller's permit for its operation at the location may assert the limited immunity provided by this Chapter. The distance requirements set forth in this subsection shall not apply to: (i) those licensed health care and other facilities identified in California Health and Safety Code Section 11362.7(d)(1); (ii) defeat the limited immunity claim of a medical marijuana business that is otherwise entitled to assert the limited immunity provided by this Chapter if it moves within 180 days after the effective date of this Chapter to a location that does not violate the distance requirements; and (iii) a medical marijuana business that is in violation of the distance requirement of this subsection as a result of the establishment of a conflicting use (a school, public park or other medical marijuana business) after the date on which the State Board of Equalization issued a seller permit to the medical marijuana business for its location.

(P) Every medical marijuana business is prohibited that fails to obtain from each person supplying marijuana being offered for sale, distribution, gift or delivery by the business, the following information concerning the location of where the marijuana cultivation took place and thereafter makes said information immediately available upon the request of any law

enforcement officer or enforcing officer: (1) the name of the person supplying the marijuana; (2) the address of the location at which the marijuana being supplied is cultivated; (3) written documentation from the owner of the property where the marijuana cultivation takes place that he or she has agreed to the use of the site for cultivation; and (4) if the marijuana is being cultivated indoors, a written certification from a licensed electrician that the cultivation location has all necessary electrical permits required by the California Building Codes to ensure that the growing operations can be carried out safely.

The limited immunity provided by this Section shall not be available to and shall not be asserted as an affirmative defense to any violation of law except as expressly set forth in this Chapter. Further, nothing contained in this limited immunity is intended to provide or shall be asserted as a defense to a claim for violation of law brought by any county, state, or federal governmental authority. Finally, the limited immunity provided by this Section shall be available and may be asserted only so long as each and every provision and clause of subsections (A) through (P) and of this Section 7.124.040 remain valid, effective and operative.

7.124.050 No vested or nonconforming rights.

(A) This Chapter prohibits medical marijuana businesses. Neither this Chapter, nor any other provision of this Code or action, failure to act, statement, representation, certificate, approval, or permit issued by the County or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any medical marijuana business. Any immunity or benefit conferred by this Chapter shall expire permanently and in full upon repeal of this Chapter.

(B) All existing medical marijuana businesses must immediately cease operation; except that any medical marijuana business that that does not violate any of the medical marijuana business prohibitions described in Section 7.124.040, Limited Immunity, may continue to operate but only so long as subsections (A) through (P) of Section 7.124.040 remain valid, effective and operative.

7.124.060 Prohibited cultivation activities.

(A) The cultivation of marijuana, either indoors or outdoors, at any location in an amount or quantity greater than as provided herein, or in any other way not in conformance with or in violation of any provision of this Section 7.124.070, is prohibited and hereby declared to be a public nuisance that may be abated in accordance with this Chapter, and by any other means available by law.

(B) The prohibition in Subsection (A), above, includes renting, leasing, or otherwise permitting the cultivation of marijuana at any location.

7.124.070 Limited immunity for cultivation activities.

Notwithstanding the activities prohibited and declared a nuisance by Section 7.124.060, and notwithstanding that a medical marijuana business is not and shall not become a permitted use in the County for so long as this Chapter remains in effect, the cultivation of marijuana shall not be subject to the enforcement remedies set forth in the Santa Cruz County Code solely on the basis of: (1) an activity prohibited by Section 7.124.060; and (2) the fact that the cultivation of marijuana is not a permitted use in the County, provided however that, as authorized by California Health and Safety Code Section 11362.83, this limited immunity is available and may

be asserted as an affirmative defense only so long as the cultivation activity does not violate any of the following restrictions and requirements:

(A) Cultivation within a residence. Cultivation of marijuana inside a residence at any location shall be limited to no more than one hundred (100) square feet of total garden canopy allowed for a qualified patient, person with an identification card, and/or primary caregiver using the residence as his or her primary domicile. In no event shall the total garden canopy within a single residence exceed one hundred (100) square feet regardless of the number of qualified patients, persons with an identification card, and/or primary caregivers residing at that location. Neither outdoor cultivation nor indoor cultivation within a non-residential structure or building shall be permitted on any parcel where cultivation takes place within a residence.

(B) Indoor cultivation other than a residence. The indoor cultivation of marijuana within a building or structure other than a residence shall be limited to no more than one structure per parcel, and no more than one hundred (100) square feet of total garden canopy for each qualified patient, person with an identification card, and/or primary caregiver. In no event shall the indoor cultivation of marijuana within a building or structure other than a residence exceed three hundred (300) square feet regardless of the number of persons collectively or cooperatively cultivating marijuana at that location. The indoor cultivation of marijuana within a building or structure other than a residence is prohibited if the structure is located within a residential zone district or if the structure is located within three hundred (300) feet of an occupied dwelling unit. Outdoor cultivation is prohibited on any parcel where any indoor cultivation takes place. Neither outdoor cultivation nor indoor cultivation within a residence shall be permitted on any parcel where cultivation takes place within a non-residential building or structure.

(C) Small Outdoor Cultivation. The outdoor cultivation of marijuana at a location that is less than one acre in size shall be carried out in compliance with all requirements of Title 16 of the Santa Cruz County Code (entitled "Environmental and Resource Protection"), and shall be limited to no more than one hundred (100) square feet of total garden canopy allowed for each qualified patient, person with an identification card, and/or primary caregiver acting together collectively or cooperatively. In no event shall the total garden canopy at that location exceed three hundred (300) square feet regardless of the number of persons collectively or cooperatively cultivating marijuana at that location. Indoor cultivation is prohibited on any parcel where outdoor cultivation takes place.

(D) Large Outdoor Cultivation. The outdoor cultivation of marijuana at a location that is one acre in size or greater shall be carried out in compliance with all requirements of Title 16 of the Santa Cruz County Code (entitled "Environmental and Resource Protection"), and shall be limited to no more than one hundred (100) square feet of total garden canopy allowed for each qualified patient, person with an identification card, and/or primary caregiver acting together collectively or cooperatively. In no event shall the total garden canopy at that location exceed one thousand (1,000) square feet regardless of the number of persons collectively or cooperatively cultivating marijuana, except that an outdoor cultivation site granted an exemption by the Planning Director pursuant to Santa Cruz County Code section 13.10.670 (g) as enacted by Ordinance #5090, shall not be subject to the maximum size limitations imposed herein so long as the area subject to cultivation is not expanded or enlarged beyond what existed at that location on of January 1, 2012. Indoor cultivation is prohibited on any parcel where outdoor

cultivation takes place. On a parcel greater than one acre, the outdoor cultivation of marijuana within three hundred (300) feet of an occupied dwelling unit is prohibited.

(E) Notwithstanding the provisions of this section 7.124.070, the outdoor cultivation of marijuana, in any amount or quantity upon any parcel located within six hundred (600) feet of any school, is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter. Such distance shall be measured in a straight line from the boundary line of the location upon which marijuana is cultivated to the boundary line of the location upon which the school is situated.

(F) Notwithstanding the provisions of this Section 7.124.080, the outdoor cultivation of marijuana at any location is prohibited unless it takes place fully enclosed by an opaque fence at least six (6) feet in height. The fence must be adequately secure to prevent unauthorized entry.

(G) No person owning, leasing, occupying, or having charge or possession of any parcel within the county shall cause, allow, suffer, or permit such premises to be used for the outdoor or indoor cultivation of marijuana plants in violation of this Chapter.

(H) For purposes of this Section 7.124.080, total garden canopy shall be measured by the combined vegetative growth area in active cultivation.

7.124.080 Limited severability.

(A) If any provision or clause of Sections 7.124.040 and/or 7.124.070 of this Chapter are held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall invalidate every other provision, clause and application of the invalidated Section, and to this end the provisions and clauses of Section 7.124.040 and 7.124.070 of this Chapter are declared to be inseverable.

(B) Except for the inseverability of the provisions, clauses and applications of Sections 7.124.040 and/or 7.124.070 on the terms set forth hereinabove, if any other provision or clause of this Chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect those provisions, clauses or applications of this Chapter which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this Chapter other than Sections 7.124.040 and/or 7.124.070 are declared to be severable.

7.124.090 Enforcement.

(A) Enforcement of this Chapter may be pursued by one or more of those alternatives set forth in subsection (A) of County Code section 19.01.030. It shall be a separate offense for each and every day during any portion of which any violation of, or failure to comply with, any provision of this Chapter is committed, continued or permitted.

(B) Whenever the Enforcing Officer determines that a public nuisance as defined in this Chapter exists at any location within the unincorporated area of Santa Cruz County, he or she is authorized to issue a Notice of Violation pursuant to County Code section 1.12.070, except that the violator shall be provided with notice of the opportunity to remedy the violation within seven (7) calendar days without civil penalties.

(C) In the event a court of competent jurisdiction preliminarily or permanently enjoins, or holds to be unconstitutional or otherwise invalid, any enforcement remedy provided for in this Section, then the remainder of the enforcement remedies provided for by this Section shall remain in full force and effect. 0751

7.124.100 No Duty to Enforce.

Nothing in this Chapter shall be construed as imposing on the Enforcing Officer or the County of Santa Cruz any duty to issue a notice of violation, nor to abate any unlawful marijuana business activity or cultivation, nor to take any other action with regard to any unlawful marijuana business activity or cultivation, and neither the Enforcing Officer nor the County shall be held liable for failure to issue an order to abate any unlawful marijuana business activity or cultivation, nor for failure to abate any unlawful marijuana business activity or cultivation, nor for failure to take any other action with regard to any unlawful marijuana business activity or cultivation.

SECTION III

The Santa Cruz County Code is hereby amended by deleting existing 13.10.670 in its entirety.

SECTION IV

The "Commercial Uses Chart" in Subdivision (B) of Section 13.10.332 of the Santa Cruz County Code is hereby amended by deleting the reference to "medical marijuana cooperatives" in its entirety.

SECTION V

The Santa Cruz County Code is hereby amended by deleting the definition of "Medical marijuana cooperative" in Section 13.10.700-M.

SECTION VI

This ordinance shall take effect on the 31st day after the date of final passage.

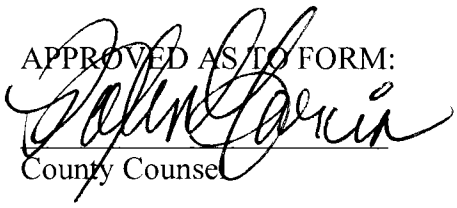
PASSED AND ADOPTED this ____ day of _____, 2013, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

_____
Chairperson of the
Board of Supervisors

Attest:_____
Clerk of the Board

APPROVED AS TO FORM:



County Counsel

cc: County Administrative Office
Planning Director

CALIFORNIA ENVIRONMENTAL QUALITY ACT
NOTICE OF EXEMPTION

0753

The Santa Cruz County Planning Department has reviewed the project described below and has determined that it is exempt from the provisions of CEQA as specified in Sections 15061 - 15332 of CEQA for the reason(s) which have been specified in this document.

Application Number: N/A
Assessor Parcel Number: County-wide
Project Location: County-wide

Project Description: Proposed Ordinance deleting Chapter 7.124, deleting Section 13.10.670, amending the Commercial Uses Chart and the definitions of the Zoning Ordinance, and enacting new Chapter 7.124, all relating to medical marijuana

Person or Agency Proposing Project: County of Santa Cruz

Staff Contact and Phone Number: Rahn Garcia – 454-2040

A. ____ The proposed activity is not a project under CEQA Guidelines Section 15378.

B. __X__ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).

C. ____ **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.

D. ____ **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).

E. __X__ **Categorical Exemption**

CEQA Guidelines Section 15308: Action by Regulatory Agencies for the Protection of the Environment

F. Reasons why the project is exempt:

Enactment of this ordinance will not authorize or permit the operation of medical marijuana dispensaries or the cultivation of marijuana. As such, adoption of the ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines Section 15060(c)(2)). The ordinance establishes a framework which the County will apply to exercise its enforcement discretion involving medical marijuana dispensaries or marijuana cultivation operations. The potential for enforcement arising from the ordinance is an action by a regulatory agency for purposes of protecting the environment.

In addition, none of the conditions described in Section 15300.2 apply to this project.

Staff Planner: _____ Date: September 16, 2013
Ken Hart